STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MANDY HAWTHORNE and ALEXIS WEATHERS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MELISSA HAWTHORNE,

Respondent-Appellant,

and

DANNY WEATHERS,

Respondent.

UNPUBLISHED
June 7, 2005

No. 255442
Wayne Circuit Court
Family Division
LC No. 01-402427-NA

Before: Saad, P.J., and Zahra and Schuette, JJ.

PER CURIAM.

Respondent mother, Melissa Hawthorne, appeals from a family court order that granted custody of two minor children to their father, Danny Weathers. We affirm.

Hawthorne contends that the trial court erroneously placed on her the burden to show that custody of the girls should change. She asserts that the burden should have been on Weathers to establish that the children should be placed in his custody. Hawthorne has waived this argument for failure to adequately brief it.[1] Moreover, Hawthorne does not set forth any legal or factual

[1] In a single sentence, Hawthorne merely asserts, without explanation or development, that the burden was improperly placed on her because the children, at one time, resided with her. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow." *Yee v Shiawassee County Bd of Com'rs*, 251 Mich App 379, 406; (continued…)

argument that the trial court erred when it found that the children had an established custodial environment with Weathers. Once a custodial environment is found, it is well-settled that custody may only be changed if the parent challenging custody "presents clear and convincing evidence that the change serves the best interests of the child." *Foskett v Foskett*, 247 Mich App 1, 6; 634 NW2d 363 (2001). Accordingly, the trial court correctly placed the burden on Hawthorne to present evidence that custody should be changed.

Were we to read into Hawthorne's argument an allegation that the trial court erred by finding that a custodial environment was established with Danny Weathers, we would affirm the trial court. Our statutes and case law clearly state that a trial court's order in a child custody case *must* be affirmed "unless the trial judge made findings of fact against the great weight of evidence or committed palpable abuse of discretion or a clear legal error on a major issue." MCL 722.28; *Fletcher v Fletcher*, 447 Mich 871, 876-877; 526 NW2d 889 (1994). Before the trial court considered the "best interest" factors, it ruled that a custodial environment was established with Weathers pursuant to MCL 722.27(1)(c):

> A custodial environment is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered. MCL 722.27(1)(c).

The record clearly shows that, after the children were removed from Hawthorne's home because of abuse and neglect, the eight-year old child was placed in Weathers' home in October 2002 and the six-year old child was placed in Weathers' home in January 2003. The children remained under Weathers' care when the custody determination took place on February 25, 2004. The record reflects that Hawthorne visited the children, but that Weathers was in charge of their full-time care and custody. Further, Weathers fought for permanent custody of the children, evidencing an inclination to make his custody permanent.

Moreover, though the children were placed with Weathers pursuant to an order issued in a termination of parental rights proceeding, "[i]n determining whether an established custodial environment exists, it makes no difference whether that environment was created by a court order, without a court order, in violation of a court order, or by a court order that was subsequently reversed." *Hayes v Hayes*, 209 Mich App 385, 388; 532 NW2d 190 (1995), citing *Blaskowski v Blaskowski*, 115 Mich App 1, 6; 320 NW2d 268 (1982). We will not reverse a trial court's order in a custody proceeding "*unless the trial judge made findings of fact against the great weight of*

(…continued)

651 NW2d 756 (2002), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." MCL 722.28. Hawthorne has pointed to no such error and, therefore, we affirm.[2]

/s/ Henry William Saad
/s/ Brian K. Zahra
/s/ Bill Schuette

[2] Hawthorne also complains that the trial court erred by excluding testimony regarding circumstances that existed before the children were removed from her home. If a challenged ruling excludes evidence, the complaining party must make an offer of proof unless the substance of evidence is apparent from the record. MRE 103(a)(2). Hawthorne made no offer of proof and, on appeal, she does not describe the evidence she should have been permitted to introduce or how it would have assisted her case. Further, her citation to *Thompson v Thompson*, 261 Mich App 353; 683 NW2d 250 (2004) is unavailing because, here, a full custody hearing was held and, though the court ostensibly limited the evidence to pre-October 2001 occurrences, both parties introduced ample evidence predating this cutoff. Further, given the numerous hearings that were held throughout the termination and custody proceedings, Hawthorne cannot establish that she was denied a full and fair opportunity to present her evidence.